

BOARD OF APPEALS CASE NO. 5191

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BEFORE THE

APPLICANTS: Christine Sisk & Linda Mabry

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ZONING HEARING EXAMINER

**REQUEST: Variance to permit an existing
swimming pool within the required setbacks;
3744 Wolf Trail Drive, Abingdon**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 10/24/01 & 10/31/01

HEARING DATE: December 19, 2001

Record: 10/25/01 & 11/2/01

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Christine Yvonne Sisk and Linda T. Mabry, are requesting a variance, pursuant to Section 267-26C(4) of the Harford County Code to allow an existing pool to be less than 10 feet from the property line in an R3/COS District.

The subject parcel is located at 3744 Wolf Trail Drive, Abingdon, Maryland 21009, in the First Election District, and is more particularly identified on Tax Map 62, Grid 2C, Parcel 678, in the subdivision of Harford Town. The parcel contains approximately 0.185 acres.

The Applicant, Linda Thelma Mabry, appeared and testified that she and the Co-Applicant, Christine Yvonne Sisk, are the owners of the subject property. Ms. Mabry stated that she is familiar with the Department of Planning and Zoning Staff Report, and has no changes or corrections to that report. The witness described her property as an unusually shaped lot, which measures 98 feet across the front and 48 feet across the back.

According to the witness, she contracted with Larry Feldman in September, 2000 to construct a pool in the back yard of her property. All necessary permits were obtained, and the pool was then installed by Mr. Feldman. On July 25, 2001, the Applicants received a letter from the Department of Planning and Zoning notifying them that the pool did not meet setback requirements. Ms. Mabry testified that the northeast corner of the pool is 8 feet from the property line, and the southeast corner of the pool is 9 feet from the property line. She also testified that lot 305 adjoins her property to the east, immediately adjacent to the encroachment.

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The witness further stated that, due to the unusual configuration of her property, there is no other feasible location where the pool could have been placed. The witness then identified several photographs attached to the Department of Planning and Zoning Staff Report (Attachment 7). The top photo shows the subject property, the front of the dwelling, and the surrounding properties. The second photo shows the side of the home, the back yard, including part of the pool, and adjoining properties. The third photo shows the rear corner of the home, and the adjacent lot. The fourth photo shows the rear of the house and the pool.

The Applicant stated that she does not believe that granting the requested variance would have any adverse impact on adjoining properties. The entire back yard is fenced, and at ground level, the pool is not visible from any adjoining property. She introduced a letter into evidence (Applicant's Exhibit 1) from the owners of Lot 305, Nancy and Steven Brisco. The Briscos indicated in the letter that they have no objection to the granting of the requested variance.

Mr. Michael J. Schultz, the owner of lot 295, which adjoins the subject property to the northeast, asked the Applicant on cross-examination whether her pool affects the drainage to the rear of her lot near his property line. The Applicant responded that the swale flows through the drainage easement from the west side of her property, and exits into the drainage easement behind lot 305 to the east of her property. She also stated that the placement of her pool does not cause any drainage to flow onto Mr. Schultz's property.

Mr. Anthony McClune appeared, and testified on behalf of the Department of Planning and Zoning. Mr. McClune testified that his Department investigated the requested variance, and made the following findings of fact. The Department found that the property is uniquely shaped because of the curve in the road of Wolf Trail Drive, and because of the way in which the lot is laid out. The useable area of the back yard is limited because of the configuration of the property. Encroachment into the setback required from lot 305, is 2 feet at the northeast corner of the pool, and 1 foot at the southeast corner of the pool. According to Mr. McClune, the pool is not visible outside of the subject property due to a fence enclosing the entire rear yard.

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The Department of Planning and Zoning recommended approval of the requested variance in its Staff Report dated December 11, 2001, conditioned upon the Applicants amending the existing permit to accurately reflect the existing location of the pool. Mr. McClune testified that the Department does not believe the existing pool has any adverse impact on neighboring properties, as lot 305 is the only lot whose setback has been encroached upon.

Mr. Schultz asked Mr. McClune on cross-examination about the location of drainage on the subject property. Mr. McClune testified that the Applicant's pool is located outside of the five foot drainage and utility easement, and therefore has no impact on drainage. Mr. Schultz also asked Mr. McClune whether he had noticed any swale at the rear of the subject property. Mr. McClune responded that he had not.

Mr. Schultz appeared and testified in opposition to the granting of the requested variance. He stated that his property adjoins the subject property to the north, and is shown on the site plan (Staff Report Attachment 3) as Lot 295. Mr. Schultz stated that the existing 2 foot encroachment causes drainage to run onto the rear of his lot, thereby washing away some of his mulch. He testified that in his opinion, the aforesaid drainage enters his lot from the encroaching area of the pool. The witness stated that he purchased his property, approximately four and one-half years ago. At that time, there were trees in the Applicants' yard, where the pool is now located. In order to build the pool, the Applicants cleared trees from their property, which is located at a higher elevation than his lot. Mr. Schultz testified that since the trees were cleared, drainage from the subject property has been running onto his property. Mr. Schultz agreed with the Applicant that the drainage behind the subject property runs from west to east, from lot 307, through the subject property, and exits onto lot 305.

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Craig M. Bush then appeared and testified in opposition to the requested variance on behalf of Mr. Schultz. Mr. Bush stated that he is the owner of Lot 294, which adjoins the rear northeast side of the subject property. According to the witness, the encroachment of the Applicants' pool into the required setback from lot 305 has no effect at all on his property. He also testified that he believes that the location of the pool, within the setback area, causes drainage to run onto Mr. Schultz's lot. He stated that when the houses were originally built, the subject property had a drainage area running through the trees in the middle of Applicant's back yard, but when the pool was built, the trees were cleared, and some drainage now runs onto Mr. Schultz's lot.

CONCLUSION:

The Applicants, Christine Yvonne Sisk and Linda T. Mabry, are requesting a variance, pursuant to Section 267-26(D)(3) of the Harford County Code, to allow an existing pool to be less than 10 feet from the property line (existing 8 feet and 9 feet) in an R3/COS District.

Section 267-26(D)(3) of the Harford County Code provides:

“Recreational facilities, such as swimming pools and tennis courts, if the facilities are to be used by the occupants or guests of the principal use and no admission or membership fees are charged, provided that the edge of the facility, not including security fences, shall be located not less than ten (10) feet from any side or rear lot line. For community pools and tennis courts, the edge of the facility shall be located no less than fifty (50) feet from any residential unit or side and rear lot line.”

Section 267-11 of the Harford County Code permits the granting of variances, stating:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

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The Maryland Court of Special Appeals set forth a two-prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique only if there is a finding that a peculiar characteristic or unusual circumstance, relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, *supra*, at 721. If the subject property is found to be unique, the hearing examiner may proceed to the second prong of the test. The second prong involves a determination as to whether literal enforcement of the zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The property is unusually shaped, and the building envelope of the back yard is limited due to this unique configuration. Having found that the subject property is unique, it must next be determined whether denial of the requested variance would create an unreasonable hardship or practical difficulty for the Applicants. The Hearing Officer finds that literal enforcement of the Code would result in both practical difficulty, and real hardship to the Applicants by forcing them to remove the existing pool.

Finally, the Hearing Examiner finds that the granting of the requested variance will neither be substantially detrimental to adjacent properties, nor materially impair the purpose of the Code. The encroachment causes no visual impact to any adjoining properties because the pool cannot be seen from outside the subject property at ground level. The owners of lot 305, which is the lot whose setback is actually being encroached upon, provided Applicants with a letter stating that they have no objection to the granting of the requested variance. Mr. Bush, whose lot adjoins the subject property at the northeast corner testified that the encroachment has no effect whatsoever on his property.

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Both the Applicant and Mr. Schultz testified that the drainage behind the subject property runs from west to east, from lot 307 through the subject property, and into lot 305. Mr. McClune testified that the Applicants' pool does not encroach into the drainage easement, and therefore has no impact on drainage. Applicants' property is higher in elevation than Mr. Schultz's property. Both Mr. Schultz and Mr. Bush testified that prior to the removal of trees from the middle of Applicants' back yard, no drainage at all ran onto Mr. Schultz's property. The trees, however, if located in the middle of Applicants' back yard, were obviously not removed from the area of the existing 1-2 foot encroachment. Applicants could have removed these trees without the necessity of obtaining a variance. The encroachment itself is not the cause of any problems which Mr. Schultz may be experiencing. Therefore, the granting of the requested variance will not be substantially detrimental to Mr. Schultz's property.

The Hearing Examiner recommends approval of the Applicants' request, subject to the following conditions:

1. That the Applicants amend the existing permit for the pool to accurately reflect the existing location.
2. That the Applicant not encroach further into the setbacks than the distance requested herein.

Date JANUARY 25, 2002

Rebecca A. Bryant
Zoning Hearing Examiner